

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10875 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KOKILABEN WD/O. NARENDRA

KANTILAL PANDYA

Versus

CHAIRMAN INDIAN BANK

Appearance:

MRS DT SHAH for Petitioner

M/s DHARMESH V SHAH & NR PARIKH for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/08/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties.

2. The petitioner by this petition prays for directions to the respondents to release her family pension. Further prayer has been made for payment of arrears of the family pension with interest. Prayer has also been made for quashing and setting aside the order

dated 14.9.1998 under which family pension has been denied to the petitioner. This order is at page 33, and is as Annexure-I to the Special Civil Application. It is mentioned in the letter aforesaid that late Shri N.K.Pandya had not opted for family pension and hence both provident fund employee's contribution and bank's contribution were settled. It has further been stated that the petitioner may accept provident fund employee's contribution and bank's contribution as per the eligibility. Lastly, it is stated that if the petitioner is still interested only to have payment of employee's contribution of provident fund, she may give undertaking to the bank that she is claiming this on her own volition.

3. During the course of arguments learned counsel for the respondent does not dispute that the option of the husband of the petitioner for family pension was there. It was also addressed to the authority concerned, but it was not sent through proper channel.

4. It has next been contended by the learned counsel for the respondent that the husband of the petitioner continued to get benefits of contributory provident fund scheme. The bank continued to deposit contribution i.e. employer's contribution as well as employee's contribution after deducting the same from his salary. Very fact that the husband of the petitioner has not opted for family pension, continues to avail the deposit benefit of contributory provident fund scheme, the petitioner is not entitled for the family pension.

5. I do not find substance in any of these contentions. Even, if it is taken that the husband of the petitioner permitted the deduction of contribution from his salary towards provident fund and the employer has also deposited equal contribution, unless there is motive or purposes to get some benefits for which he would not have otherwise been entitled and received by him, only on this ground denial of the family pension to the petitioner is highly arbitrary and unjustified. The court repeatedly asked the learned counsel for the respondents to show how any benefits which otherwise were not due to the husband of the petitioner, he got, though he opted for family pension and permitted deduction from his salary his contribution towards the provident fund but he failed to give out anything positive. In such matter the petitioner would not have been entitled for the amount of the employer's contribution which she is not claiming. So far as employee's contribution is concerned, it is her own money. She is entitle for this

amount to which parties are not at variance.

6. Denial of the family pension to the petitioner on the grounds as given out in the impugned order is not only wholly arbitrary and perverse but contrary to the socio economic purpose and object of the pension scheme. The petitioner has to suffer in two ways. She has not been given family pension as well as employee's contribution towards provident fund. Insistence of the respondents that the petitioner to give out a undertaking subject to which only it has to release the amount of employee's contribution is nothing but only an approach of the respondents which is wholly arbitrary and perverse. In such matter the approach should have been reasonable and the poor lady should have been given employee's contribution forthwith though subject to right and reservation of the bank. The bank on its own should have sent this amount to the petitioner so that this poor lady would not have suffered for all these years. I fail to see any justification in the action of the respondent to withhold the amount of the employee's contribution towards provident fund scheme merely because the petitioner has not furnished such undertaking may be under the bonafide believe that she will become disentitle for the family pension otherwise she is entitle to the same. Whatever the objections against the claim of the petitioner for family pension would have been continued or could have been reserved, but withholding of the amount of employee's contribution by the bank deserves to be deprecated. It is not befitting to the institution. This approach of the Bank is totally perverse as well as against the basic conception of socio economic policy and scheme which were from time to time introduced for benefits of the employees and their families. I find from the record of the Special Civil Application that the husband of the petitioner has submitted his option for pension scheme.

7. In the result this Special Civil Application succeeds and the same is allowed. The respondent bank is directed to pay the amount of the employee's contribution made to the provident fund scheme by the husband of the petitioner with interest thereon at the rate of 12% from the date of death of the husband of the petitioner till the payment thereof. It is hereby declare that the petitioner is entitle for family pension. The respondent is directed to sanction family pension payable to the petitioner as per the last pay drawn by her husband within a period of one month from the date of receipt of the writ of this order and continue to pay her monthly family pension till the date she is entitle for the same

or she survives whichever is earlier. Arrears of the family pension be determined and be paid to her with interest at the rate of 12% p.a. within one month from the date of the receipt of the writ of this order. Rule is made absolute.

(S.K.Keshote,J.)

(pathan)